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LOS ANGELES

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21 UNITED STATES DISTRICT COURT
22 FOR THE CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 INDUSTRY CONCEPT HOLDINGS,
25 INC., a Colorado corporation and
26 PRIMP,
27 INC., a Colorado corporation,

28 Plaintiffs,

v.

ALAN ELGORT, an individual, GREG
LORBER, an individual, LARRY
MONTROYA, an individual, ANDREW

DOCUMENT FILED UNDER
SEAL

Case No. CV 11-04444 CAS (JEMx)

DEFENDANT VL RAYMER'S
OPPOSITION TO ORDER TO
SHOW CAUSE RE
PRELIMINARY INJUNCTION
AND SEIZURE ORDER;
MEMORANDUM OF POINTS
AND AUTHORITIES IN

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17 VL RAYMER

18 **UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION**

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23 PRIMP,
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26 v.

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28 LORBER, an individual, LARRY
MONTOYA, an individual, ANDREW

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**DEFENDANT VL RAYMER'S
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SHOW CAUSE RE
PRELIMINARY INJUNCTION
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MEMORANDUM OF POINTS
AND AUTHORITIES IN**

PAYNE, an individual, FANNY GARCIA, an individual, PACIFIC APPAREL, LLC, a Nevada corporation, JULIE SAENZ, an individual, HAUTLOOK, a California corporation, MARQUETTE COMMERCIAL FINANCE, a Texas corporation, VL RAYMER, an individual, and JOHN DOES 1 through 10,

Defendants.

SUPPORT THEREOF

[Supporting Declarations of VL Raymer, Karen J. Bernstein and Jon M. Leader concurrently filed]

Date: July 7, 2011

Time: 10:00 a.m.

Place: Courtroom 5

312 No. Spring Street
Los Angeles, CA 90012

Complaint filed: May 24, 2011

Trial Date: None Set

Hearing Date: July 7, 2011

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on July 7, 2011, at 10:00 a.m., in Courtroom 5 of the above-referenced Court, located at 312 N. Spring Street, Los Angeles, California 90012, before the Honorable Christina A. Snyder, Defendant VL RAYMER ("Ms. Raymer") will oppose Plaintiffs' application for a Preliminary Injunction ("Plaintiffs' Application"). Plaintiffs' Application should be denied as to Ms. Raymer because she is not manufacturing, importing, exporting, distributing, shipping, introducing into commerce, offering for sale, selling, returning, disposing of, packaging, re-packaging, marketing, advertising, or supplying any goods that bear, embody, display or affix the Primp and Love Crush marks, because she has never been and is not in the apparel business.

This opposition is based on this Notice, the Memorandum of Points and Authorities, the Declaration of VL Raymer in Support of the Opposition to Plaintiffs' Application, the Declaration of Karen J. Bernstein in Support of the Opposition to Plaintiff's Application filed concurrently herewith, Defendant VL

1 Raymer's Joinder in Motion for Objections to Evidence Filed by Marquette
2 Commercial Finance, and all facts of which the Court may take judicial notice,
3 and such further evidence and argument as the Court may consider at any
4 hearing on Plaintiffs' Application.

5 LEADER GORHAM LLP

6 Dated: July 6, 2011

7 By: 

8 Gary J. Gorham
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The allegations made against Ms. Raymer in the instant action are nothing but a
 4 work of fiction. Plaintiffs appear to have devised their Complaint against Ms. Raymer
 5 for the sole purpose of attempting to require Ms. Raymer to transfer or abandon the
 6 domain name, Primp.com (the "Domain Name"), to Plaintiffs, which has been
 7 registered to Ms. Raymer for *thirteen years*. Ms. Raymer's use of the Domain Name
 8 predates Plaintiffs' use of the allegedly infringed mark by *five years*. The Domain
 9 Name is not used to market or sell apparel of any kind, and Ms. Raymer never has
 10 been involved in the apparel industry, whether in conjunction with the Domain Name
 11 or otherwise. She has never owned a business that sells apparel. She has never
 12 imported or distributed apparel. Plaintiffs have no legitimate claim against Ms.
 13 Raymer for anything.

14 Plaintiffs' Application inappropriately lumps Ms. Raymer with the other named
 15 defendants, which appear to operate in the apparel industry. Plaintiffs accuse Ms.
 16 Raymer, in the complaint of counterfeiting. Those allegations are false. Among other
 17 things, Ms. Raymer buys and sells domain names just like people invest in the stock
 18 market. Ms. Raymer has been the continuous registrant of the Domain Name for years
 19 before Plaintiffs ever existed. Ms. Raymer is not the registrant of record of any
 20 domain names containing the words, "Love" or "Crush" or "Love Crush," so it is quite
 21 unsettling that counterfeiting allegations would be lodged against Ms. Raymer in
 22 federal court.

23 The instant action involves facts and parties that have absolutely nothing to do
 24 with Ms. Raymer. She does not know any of the defendants and has had absolutely no
 25 business dealings with them, so she is not "related" to the other named defendants as
 26 alleged by Plaintiffs.

1 Plaintiffs cannot meet their burden of demonstrating need for the extraordinary
2 remedy of a preliminary injunction against Ms. Raymer, because they will not prevail
3 on the merits of the case. Nor is there any reason for injunctive relief, because the
4 Domain Name is completely unrelated to the sale of apparel, and has nothing to do at
5 all with the counterfeiting alleged by Plaintiffs. Nor is there an emergency. Plaintiffs
6 sat on their rights for years, only to turn around and declare an emergency.

7 Indeed, a review of Plaintiffs' moving papers in support of the Application fail
8 to reveal what Plaintiffs seek to restrain since Ms. Raymer does not sell apparel. This
9 is fundamentally unfair to Ms. Raymer, especially since she has nothing to do with the
10 apparel business.

11 For the foregoing reasons and more specifically presented herewith, Ms. Raymer
12 respectfully requests the Court deny Plaintiffs' Application with respect to Ms.
13 Raymer or, in the event the Court denies Ms. Raymer's opposition to Plaintiffs'
14 Application, provide Ms. Raymer with additional time to supplement her opposition
15 and to brief this Court as she becomes aware of additional developments and facts to
16 support her defense in light of the time constraints based on the facts set forth below.

17 II. FACTS

18 A. Relevant Facts

19 In or around 1998, Ms. Raymer registered the domain name, Primp.com.

20 On April 26, 2011, counsel for Plaintiffs e-mailed a letter dated April 23, 2011
21 to Ms. Raymer demanding she cease and desist using the Domain Name and to transfer
22 it to Plaintiffs. There was no mention of the mark LOVE CRUSH in the letter to put
23 Ms. Raymer on notice of Plaintiffs' purported superior trademark rights. Thereafter,
24 on May 18, 2011, Ms. Raymer's former attorney responded that Ms. Raymer could not
25 have been aware of the PRIMP trademark at the time she registered the Domain Name
26 in 1998 because Plaintiffs' use of the tradename and trademark for PRIMP had not yet
27 begun, so she did not register the Domain Name in bad faith.

1 On June 7, 2011, five days after the cut-off date for defendants to file their
2 oppositions to Plaintiffs' Application, Plaintiffs' counsel sent another e-mail to Ms.
3 Raymer, attaching the Complaint and application for a Temporary Restraining
4 Order/Seizure Order and also advising Ms. Raymer that she had been "served," which
5 was factually and legally incorrect. Plaintiffs' counsel asked Ms. Raymer for an
6 address for services of process, but Ms. Raymer was shocked and not wishing to
7 represent herself *pro se*, she searched for suitable trial counsel to represent her in the
8 instant litigation.

9 Subsequently, Ms. Raymer secured a consultation with Attorney Bernstein who
10 is admitted in New York. On June 20, 2011, Ms. Bernstein telephoned Plaintiffs'
11 counsel in an effort to convince Plaintiffs to drop their frivolous claims against Ms.
12 Raymer. Plaintiffs counsel declined and sent yet another e-mail later to Ms. Raymer
13 on June 20, 2011 requesting she again provide an address for service of process.
14 Plaintiffs' counsel's June 20, 2011 e-mail did not advise Ms. Raymer that the June 8,
15 2011 OSC hearing had been adjourned to July 7, 2011 and briefs opposing Plaintiffs'
16 Application were due on June 23, 2011.

17 Thereafter, in or around June 21, 2011, Ms. Raymer formally retained Attorney
18 Bernstein, and with Ms. Bernstein's assistance she sought to find and secure local
19 counsel admitted in the State of California to represent her locally. On June 30, 2011,
20 one week after briefs were to be filed in opposition to Plaintiffs' Application, Ms.
21 Raymer retained the firm of Leader Gorham to serve as local counsel on her behalf.
22 As soon as all counsel were secured, Ms. Bernstein contacted counsel for co-
23 Defendant Marquette Commercial Finance who advised her about the June 23, 2011
24 deadline for briefing the oppositions to Plaintiffs' Application, as well as the July 7,
25 2011 OSC hearing.

26 Due to the July 4 Holiday, it was not until July 5 that Ms. Bernstein had a
27 teleconference with Plaintiffs' attorney to advise her that she was authorized to accept
28

1 service of the complaint and all papers in the instant action. Plaintiffs' counsel advised
2 Ms. Bernstein that she would deliver said copies of all the papers in this matter to
3 counsel at the July 7, 2011 OSC Hearing. Ms. Bernstein also asked Plaintiffs' counsel
4 what Plaintiffs hoped to restrain Ms. Raymer from doing if the Preliminary Injunction
5 was issued. Plaintiffs' counsel stated that her client seeks to prohibit Ms. Raymer from
6 using the Domain Name, but there is nowhere in Plaintiffs' Application that requests
7 such relief.

8 Even though Ms. Raymer has yet to be formally served with all of the papers in
9 the instant matter, she respectfully requests that she be heard on Plaintiffs' Application
10 only and reserves all other rights.

11 **B. Procedural History**

12 Plaintiffs commenced the instant action against all of the defendants, including
13 Ms. Raymer, by filing a complaint on May 24, 2011. Contemporaneously with the
14 filing of the complaint, Plaintiffs, without giving notice to Ms. Raymer, also sought *ex*
15 *parte* orders (1) sealing the instant action; and (2) filing for a temporary protective
16 order, seizure order and OSC re Preliminary Injunction – both of which were granted
17 on May 24, 2011 and May 25, 2011, respectively. The OSC re Preliminary Injunction
18 ordered a hearing for June 8, 2011.

19 As discussed, *supra*, Plaintiffs' June 7, 2011 e-mail to Ms. Raymer attached
20 only the Summons, the Complaint, and the application for the Temporary Restraining
21 Order/Preliminary Injunction, but it was not until June 30, 2011 that Ms. Raymer knew
22 that there were additional documents filed in support of the TRO, Seizure Order, and
23 Preliminary Injunction, which included all the supporting declarations, because
24 Plaintiffs' counsel withheld this information from her. Indeed, Ms. Raymer was
25 unaware that any other documents had been filed with the Court in the instant litigation
26 or that the OSC Hearing had been adjourned until July 7, 2011 with opposing briefs
27 due on June 23, 2011 until after she recently secured trial counsel, who conferred with
28

1 counsel for co-Defendant Marquette Commercial Finance. At the time, Ms. Raymer
 2 received the June 7, 2011 and June 20, 2011 e-mails from Plaintiffs' counsel she
 3 thought it was too late to file an opposition and that she might be subject to the
 4 Preliminary Injunction since the June 8, 2011 hearing date had already come and gone.
 5 This was so especially because the docket in this matter is sealed, which made it
 6 impossible to know that the June 8, 2011 hearing had been adjourned to July 7, 2011
 7 with oppositions to be filed by June 23, 2011.

8 Accordingly, Raymer respectfully requests the Court permit her to submit her
 9 Opposition to Plaintiffs' Application, despite the June 23, 2011 cut-off date, and be
 10 permitted to have her counsel (including Ms. Bernstein, whose *pro hac vice* admission
 11 is pending) appear at the July 7, 2011 OSC hearing to object to issuance of the
 12 Preliminary Injunction. Given the very tight time constraints as discussed *supra*, Ms.
 13 Raymer also respectfully requests the Court allow her additional time to supplement
 14 her Opposition and brief this Court as she becomes aware of additional developments
 15 and facts to support her defense in the event the Court does not deny Plaintiffs'
 16 Application against Ms. Raymer.

17 III. ARGUMENT

18 A "preliminary injunction is an extraordinary remedy never awarded as of
 19 right." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365,
 20 376 (2008). To prevail on their request for a preliminary injunction, Plaintiffs must
 21 prove: (1) a likelihood of success on the merits of their claims; (2) a likelihood that
 22 Plaintiffs will suffer irreparable harm in the absence of preliminary relief; (3) that the
 23 balance of equities tips in Plaintiffs' favor; and (4) that an injunction is in the public
 24 interest. *Id.*, 129 S. Ct. at 374.

25 Preliminary injunctive relief is "disfavored" and is "more closely scrutinized" by
 26 the courts. *See generally, Schrier v. University of Colorado*, 427 F.3d 1253, 1259
 27 (10th Cir. 2005); *see also Dahl v. HEM Pharmaceuticals. Corp.*, 7 F.3d 1399, 1403
 28

(9th Cir. 1993) (“mandatory preliminary relief” is subject to heightened scrutiny and should not be issued unless the facts and law clearly favor the moving party”).

Here, Plaintiffs will fail to meet their burden. Plaintiffs seek mandatory injunctive relief that does not specify what, if anything, Ms. Raymer is to be restrained from since she has never been and is not in the apparel industry.

Courts deny preliminary injunctive relief when “granting the preliminary injunction would give the movant substantially the same relief it would obtain after a trial on the merits.” *City of Los Angeles v. County of Kern*, 462 F. Supp. 2d 1105, 1111 (C.D. Cal. 2006).

In the instant case, Ms. Raymer buys and sells domains, among other things, and has never operated in the apparel industry, so she is not “manufacturing, importing, exporting, distributing, shipping, introducing into commerce, offering for sale, selling, returning, disposing of, packaging, re-packaging, marketing, advertising, or supplying any goods that bear, embody, display, or affix the Primp mark and Love Crush mark,” because she does not sell any “goods.” See Plaintiffs’ Temporary Restraining Order; Seizure Order and Order to Show Cause re Preliminary Injunction, at 7. Accordingly, since there is no continuing activity of sales of goods and any damages sustained in this matter could be assessed at trial.

A. Plaintiffs are Not “Likely to Succeed on the Merits”

Plaintiffs must prove they are “likely” to succeed on the merits of their claims. See *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 665, 124 S. Ct. 2783, 2791 (2004). The extraordinary remedy of a preliminary injunction places a heavy burden on Plaintiffs to prove this element by a “clear showing.” *City of Angoon v. Marsh*, 749 F.2d 1413, 1416 (9th Cir. 1984). Plaintiffs will fail to do so as to Ms. Raymer.

Here, Plaintiffs’ claims of trademark counterfeiting, trademark infringement, dilution, and unfair competition as to Ms. Raymer must fail. Plaintiffs do not state any

1 facts in their complaint to support the claims that Ms. Raymer manufactured, offered
 2 for sale, exhibited, imported, distributed, advertised, and sold counterfeit goods
 3 bearing Plaintiffs' marks. Likewise, no facts are stated in Plaintiffs' pleadings to
 4 justify the claims of trademark infringement, counterfeiting, copyright infringement,
 5 dilution, and purported violations of the Anticybersquatting Consumer Protection Act
 6 ("ACPA") by Ms. Raymer. Instead, Plaintiffs merely posit that "individual
 7 Defendants Greg Lorber, Alan Elgort, and Larry Montoya have been the primary
 8 moving force behind, and actively engaged in, counterfeiting and infringing activities
 9 of Defendants complaint of herein." (Complaint, at ¶ 29). There is no mention of Ms.
 10 Raymer whatsoever. If Plaintiffs had conducted their due diligence prior to expending
 11 judicial resources, they would have known that Ms. Raymer should not have been even
 12 named as a defendant in the instant litigation because they would have seen she does
 13 not sell any apparel. The claims against Ms. Raymer are baseless and do nothing to
 14 show a likelihood of success on the merits.

15 Further, Plaintiffs' bare allegations that "Defendants' Offending Goods has and
 16 is subjecting consumers to confusion" is not applicable to Ms. Raymer who does not
 17 sell apparel and never has. (Complaint 11: ¶ 51).

18 Plaintiffs also allege that the PRIMP and LOVE CRUSH trademarks have
 19 achieved fame, have "become famous," and "have been and are recognized by the
 20 public and the trade as originating from a single source: Primp." (Complaint 7:¶ 23,
 21 26; 15:¶ 74). However, Plaintiffs supply no evidence of "fame." Indeed, "famous"
 22 marks – those capable of dilution – are only those that are "widely recognized by the
 23 *general consuming public* of the United States as a designation of source of the goods
 24 or services of the mark's owner." 15 U.S.C. § 1125(c)(2)(A) (emphasis added). Thus,
 25 "famous" marks are those that most consumers would instantly recognize – such as
 26 Coca-Cola, McDonalds, Sony, and similar truly ubiquitous marks. Plaintiffs' marks
 27 simply do not rise to this level of "fame" and Plaintiffs fail to provide proof of such
 28

1 fame. Plaintiffs also allege that the PRIMP trademark is “fanciful and arbitrary and is
 2 associated in the mind of the public with Primp” and has “acquired secondary
 3 meaning” so that it is “immediately associated” as originating from Primp. (Complaint
 4 11: ¶¶ 74-75). Plaintiffs, however, fail to provide any evidence of secondary meaning,
 5 acquired distinctiveness, or strength of their mark. (*See also*, Complaint 11:¶ 47; 15:¶¶
 6 74-75).

7 Further, Ms. Raymer does not sell any goods, so there are no sales of goods to
 8 cause Plaintiffs’ so-called trademark rights from being diluted.

9 To make matters worse, Plaintiffs’ original Sixth and Eighth Claims for state
 10 statutory and common law trademark counterfeiting infringement and dilution claims
 11 are without merit since, among other reasons, the statutes upon which these claims are
 12 based, CA Business and Professions Code Sections 14320, 14340, and 14330, were
 13 repealed.¹

14 In addition, Plaintiffs cannot show that Ms. Raymer acted unfairly, especially
 15 since she sold no goods, and therefore cannot establish a likelihood of success re
 16 Unfair Competition as to Ms. Raymer. Accordingly, Plaintiffs cannot show that they
 17 are entitled to profits Ms. Raymer purportedly derived from infringement/dilution
 18 because -- once again -- Ms. Raymer does not sell any goods.

19 Finally, Plaintiffs’ request for a constructive trust is untenable, as against Ms.
 20 Raymer, because she receives no income relating to infringing activity. In any event,
 21 imposition of a constructive trust is a remedy, not a claim for relief.

22 Ms. Raymer has been informed by some of the co-defendants that Plaintiffs
 23 reportedly amended their complaint, but it has not been served on Ms. Raymer, so she
 24 has not had a chance to review it and respectfully requests the Court grant her
 25

26
 27 ¹ Ms. Raymer has been informed that Plaintiffs filed an amended complaint, but she has not been served with the pleading
 28 and has not reviewed it to comment on any of the claims that may have been amended. Accordingly, Ms. Raymer
 expressly reserves her arguments on the amended complaint until after she has been properly served, which as of the date
 of this writing she has not.

1 additional time to supplement her Opposition and to brief this Court as she becomes
2 aware of additional developments and facts to support her defense.

3 **B. There is No Irreparable Harm to Plaintiffs**

4 The Supreme Court of the United States has held that “[t]he basis for injunctive
5 relief (preliminary or permanent) in the federal courts has always been irreparable
6 injury and the inadequacy of legal remedies.” *Weinberger v. Romero-Barcelo*, 456
7 U.S. 305, 312 (1982); *see also Stanley v. University of So. Calif.*, 13 F.3d 1313, 1320
8 (9th Cir. 1994). Accordingly, Plaintiffs must make a “clear showing” that they are
9 entitled to the extraordinary remedy of a preliminary injunction. There can be no mere
10 “possibility” of irreparable harm. *Winter*, 555 U.S. 7, 129 S. Ct. at 375-76 (2008). In
11 addition, there must be a demonstration of “immediate threatened harm” for Plaintiffs
12 cannot be compensated with money damages. *See, e.g., Caribbean Marine Services*
13 *Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). There must be evidence of
14 actual injury; speculative losses are insufficient. *See Goldie's Bookstore, Inc. v.*
15 *Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984) (findings that plaintiff would lose
16 goodwill and “untold” customers held speculative).

17 Further, in the context of trademark infringement cases, the status quo to be
18 preserved by the injunction is the state of affairs that existed prior to the defendant’s
19 use of the contested trademark. *See Earth Tech. Corp. v. Envtl. Research & Tech.,*
20 *Inc.*, No. 82-6375 AWT, 1983 U.S. Dist. LEXIS 18316, at *16 (C.D. Cal. Mar. 23,
21 1983).

22 Here, issuance of a Preliminary Injunction would do nothing to preserve the
23 status quo. The prohibition would be to prevent Ms. Raymer from destroying,
24 disposing, altering, or otherwise making unavailable the counterfeit products,
25 promotional and advertising materials, or any other documents, electronic files, and
26 business records, but Plaintiffs fail to allege facts that Ms. Raymer even has possession
27 of any of the counterfeit goods, promotional and advertising materials or other
28

1 documents regarding the manufacture, sale, distribution, advertising or marketing of
 2 the alleged counterfeit goods. This is because Ms. Raymer does not sell goods. There
 3 is no threat of immediate harm here.

4 Further, Plaintiffs' Application comes too late, so there can be no irreparable
 5 harm. As discussed, *supra*, Raymer registered the Domain Name in 1998, years before
 6 Plaintiffs' first use of PRIMP, which claims a first use date on the registration of
 7 January 1, 2003. Accordingly, Plaintiffs sat on their so-called rights for more than
 8 eight years until now and are asking this Court to issue a Preliminary Injunction
 9 against Ms. Raymer. Such a substantial delay in taking action evidences there is no
 10 urgency here.

11 Indeed, the Court has denied preliminary injunctions to parties who wait as little
 12 as eleven months before moving for injunctive relief. *See Playboy Enters. v. Netscape*
 13 *Communs. Corp.*, 55 F. Supp. 2d 1070 (C.D. Cal. 1999). Here, it has been over eight
 14 years. There is no justification to impose such an extraordinary remedy against Ms.
 15 Raymer.

16 There is also no sense of urgency over purported use of the LOVE CRUSH
 17 mark since Ms. Raymer never used those marks in a domain name or anywhere else.

18 **C. If Proven at Trial, Monetary Damages Would Be More**
 19 **Appropriate**

20 Plaintiffs' allegations of counterfeiting, trademark and copyright infringement,
 21 and unfair competition can be remedied by a damages award if proven at trial. *See Los*
 22 *Angeles Memorial Coliseum Comm'n v. NFL*, 634 F.2d 1197 (9th Cir. 1980). Indeed,
 23 the claims for damages alleged here are monetary and compensable in nature,
 24 especially since the issues with Ms. Raymer have to do with the Domain Name and not
 25 counterfeiting of goods. Thus, Plaintiffs are unable to show that legal remedies are
 26 inadequate for their claims and Plaintiffs' Application should be denied.

D. The Balance of Equities Tips Decidedly in Ms. Raymer's Favor

The Court may make the determinative decision to deny injunctive relief based solely on whether the balance of equities tips in defendant's favor, and it must "balance the competing claims of injury and consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 542 (1987); *see also Dogloo, Inc. v. Dorskocil Mfg. Co., Inc.*, 893 F. Supp. 911, 917 (C.D. Cal. 1995). Likewise, the Court must assess the risk of injury to the defendant if the injunction is granted. This makes the burden even higher on Plaintiff to show the merits of its case. *See Steakhouse, Inc. v. City of Raleigh, N.C.*, 166 F.3d 634, 637 (4th Cir. 1999). If plaintiff fails to meet its burden on the balance of equities element, the preliminary injunction should be denied. *See Winter*, 129 S. Ct. at 376.

1. Issuance of the Preliminary Injunction Will Seriously Harm Ms. Raymer

Plaintiffs' Application does not explain how Plaintiffs would be harmed if preliminary injunctive relief is not issued. Without specific details, Ms. Raymer reserves her right to supplement her Opposition.

2. Any Harm to Plaintiffs Will Be Minimal If Preliminary Injunctive Relief is Denied

Plaintiffs have not articulated how they will be harmed if preliminary injunctive relief is not ordered. That is because there will be no harm to Plaintiffs if the preliminary injunction is denied as to Ms. Raymer since she is not in the apparel industry.

3. Plaintiff Comes to this Court with Unclean Hands and the Delay in Bringing a Preliminary Injunction Evidence that Preliminary Injunctive Relief is an Improper Remedy

As discussed, *supra*, Plaintiffs undoubtedly have lumped Ms. Raymer in with other defendants for which she has no common claims or interests. Indeed, by

1 bringing Ms. Raymer into the instant litigation rises to the level of vexatious litigation
 2 and Plaintiffs ought to be required to explain to the Court why they would ever allege
 3 that Ms. Raymer (a) is an apparel counterfeiter (she is not); and (b) is "related" to the
 4 other co-defendants, when in fact she does not know them and has not conducted
 5 business with any of them.

6 Plaintiffs have made unsupportable allegations against Ms. Raymer, intimidated
 7 and scared her, a lay person, into believing that she had been "served" by e-mail one
 8 day before the first OSC Hearing, filed an *ex parte* TRO, and placed the entire case
 9 under seal. Plaintiffs should also be scrutinized for failing to advise Ms. Raymer on
 10 June 20, 2011 about the adjourned July 7, 2011 OSC Hearing and the June 23, 2011
 11 cut-off date for opposing briefs, which prevented Ms. Raymer, at a minimum, from
 12 requesting an extension of time to oppose Plaintiffs' Application, with the intent and
 13 knowledge of unfairly keeping such information from Ms. Raymer. Accordingly, if
 14 the Court denies Ms. Raymer's Opposition, in interest of fairness, Ms. Raymer
 15 respectfully requests she be given more time to supplement her opposition and to brief
 16 this Court as she becomes aware of additional developments and facts to support her
 17 defense.

18 **E. Issuance of A Preliminary Injunction is Not in the Public**
 19 **Interest**

20 Plaintiffs have not demonstrated how issuance of a preliminary injunction
 21 against Raymer would be in the public interest. Indeed, no public interest will be
 22 served by enjoining Ms. Raymer from transferring and/or assigning her assets or
 23 forming new entities since she has been wrongfully named in the instant lawsuit.

24 **F. A Seizure Order is an Inappropriate Remedy Since There is**
 25 **Nothing to Seize**

26 Pursuant to 15 U.S.C. § 1116(d)(4)(B)(iii), the Court should order a preliminary
 27 injunction if:
 28

1 (B) the court finds that it **clearly** appears from specific facts that -- . . .
 2 (iii) the applicant is likely to succeed in showing that the person against
 3 whom seizure would be ordered used a **counterfeit mark in connection**
 4 **with the sale, offering for sale, or distribution of goods or services . . .**

15 U.S.C. § 1116(d)(4)(B)(iii) (emphases added).

5 Here, Ms. Raymer is not in the apparel business nor has she ever been, so it is an
 6 impossibility that she ever used a "counterfeit mark." She does not offer for sale or
 7 distribute goods or services. There is absolutely nothing to seize from Ms. Raymer.

8 Accordingly, Plaintiffs cannot establish irreparable harm or a balance of the
 9 interest tipping in Plaintiffs' favor.

10 IV. CONCLUSION

11 For the foregoing reasons, Ms. Raymer respectfully requests the Court deny
 12 Plaintiffs' Preliminary Injunction. Alternatively, in the event the Court grants
 13 Plaintiffs' Application, Ms. Raymer respectfully requests the Court permit her
 14 additional time to supplement her opposition and to brief this Court as she becomes
 15 aware of additional developments and facts to support her defense.

16
 17 Dated: July 6, 2011

LEADER GORHAM LLP

18
 19 By: 

20 Gary J. Gorham
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 22
 23
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 28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1990 South Bundy Dr., Suite 390, Los Angeles, CA 90025.

On July 6, 2011, I served the foregoing document described as:
**DEFENDANT VL RAYMER'S OPPOSITION TO ORDER TO SHOW
CAUSE RE PRELIMINARY INJUNCTION AND SEIZURE ORDER;
MEMORANDUM OF OINTS AND AUTHORITIES IN SUPPORT
THEREOF** on the interested parties in this action:

[X] BY OVERNIGHT: By placing the document(s) listed above in a sealed envelope addressed as set forth below, and causing the envelope to be delivered overnight by Federal Express ON THE FOLLOWING ONLY:

[X] BY E-MAIL: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above (or on the attached service list). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful ON THE FOLLOWING ONLY:

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Debbie Gubernick, Esq.
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11 [X] BY PERSONAL SERVICE: by placing_ the original X a true copy thereof
12 enclosed in sealed envelopes addressed as set forth below (or as addressed on the
13 attached mailing_ list) and _gave it to a professional messenger service for service
ON THE FOLLOWING ONLY:

14 **Judge's copy- via Hand Delivery**

15 U. S. District Court
16 Chambers of Judge Cristina A. Snyder
17 312 North Spring Street, Courtroom 5
Los Angeles, CA 90012

Wendy Clare Freedman, Esq.
CLARE PAULIN LLP
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Beverly Hills, CA 90210

18 [X] I declare that I am employed in the office of a member of the Bar of, or
19 permitted to practice before, this Court at whose direction the service was made and
20 declare under penalty of perjury under the laws of the United States of America that
the foregoing is true and correct.

21 Dated: July 6, 2011



Thao Vu